

CHAPTER 12

NUISANCES

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Nebraska Statutes

For statutory provisions authorizing cities to declare and abate nuisances, see R.R.S. §§ 16-230, 18-1720.

(a) GENERAL PROVISIONS

12-1-1. Definitions.

As used in this chapter, the following terms shall have the following definitions unless the context

clearly indicates otherwise.

- (1) Litter shall include, but not be limited to:
 - (a) trash, rubbish as defined in Chapter 19, solid waste as defined in Chapter 19, refuse, garbage as defined Chapter 19, paper, plastic, rags, and ashes;
 - (b) wood, plaster, cement, brick, sheetrock, or stone building rubble;
 - (c) lawn trimmings, dead leaves, tree and shrubbery trimmings, provided however that these things shall not be considered litter if they are in the process of being composted;
 - (d) offal and dead animals.
- (2) Weeds shall include, but not be limited to, bindweed (*convolvulus arvensis*), puncture vine (*tribulus terrestris*), leafy spurge (*euphorbia esula*), Canadian thistle (*cirsium arvense*), perennial peppergrass (*lepidium draba*), Russian knapweed (*centaurea picris*), Johnson grass (*sorghum halepense*), nodding or musk thistle, quack grass (*agropyron repens*), perennial sow thistle (*sonchus arvensis*), horse nettle (*solanum carolinense*), bull thistle (*cirsium lanceolatum*), buckthorn (*rahmnus sp.*) (toun), hemp plant (*cannabis sativa*), and ragweed (*ambrosiaceae*), and other worthless vegetation commonly regarded as weeds.
- (3) The term “junk,” includes scrap metal, parts for machinery, appliances or vehicles, any machine or vehicle which is not in operating condition or which has lost its identity, character, utility or serviceability as such through deterioration, dismantling or the ravages of time, or which has been cast off, discarded or thrown away or left as waste or wreckage. The term does not include:
 - (a) solid waste as defined in Chapter 19, or
 - (b) abandoned vehicles as defined in Chapter 22.
 - (c) refrigerators kept outside of a building, if each door of the refrigerator is secured by a hasp and lock as provided elsewhere in this Chapter. (Ord. 3452, 1995)

12-1-2. Nuisance; defined.

For the purpose of this chapter, a nuisance exists when a person fails to perform a duty within the city limits of the City of Scottsbluff, or permits any condition or thing to exist within the city limits of the City of Scottsbluff, which act, omission, condition or thing either:

- (a) Injures or endangers the comfort, repose, health or safety of others; or
- (b) Offends decency; or
- (c) Is offensive to the senses; or
- (d) Unlawfully interferes with, obstructs or tends to obstruct or renders dangerous for passage any public or private street, alley, highway, sidewalk, stream, ditch or drainage; or
- (e) In any way renders other persons insecure in life or the use of property;
- (d) Essentially interferes with the quiet enjoyment of life and property, or tends to depreciate the value of the property of others.

12-1-3. Nuisances; illustrative enumeration.

The maintaining, using, placing, depositing leaving or permitting to be or remain on public or private property within the city limits of the City of Scottsbluff of any of the following items, conditions or actions is hereby declared to be and to constitute a nuisance; however, this enumeration shall not be deemed or construed to be conclusive, limiting or restrictive;

- (a) Any condition which promotes harborage for rats, mice, snakes and other vermin.
- (b) Any building or other structure which is in such a dilapidated condition that it is unfit

for human habitation, or kept in such an unsanitary condition that it is a menace to the health of people residing in the vicinity thereof, or presents a fire hazard in the vicinity where it is located.

(c) All disagreeable or obnoxious gases, odors and/or fumes, as well as the conditions, substances or other causes which give rise to the emission or generation of such gases, odors and/or fumes.

(d) The dressed or undressed carcasses of fish, animals or fowl, wild game or domestic, not disposed of, processed, or removed from the general public view.

(e) The pollution of any public well or cistern, stream, lake, canal or body of water by sewage, dead animals, creamery, industrial wastes or other substances.

(f) Any building, structure or location wherein or upon which any activity which is in violation of local, state or federal law is conducted, performed or maintained.

(g) Any accumulation of stagnant water permitted or maintained on any lot or property.

(h) Dense smoke, noxious fumes, gas, soot or cinders, in unreasonable quantities.

(i) Any method of human excreta disposal which does not conform to the provisions of this chapter, state law or city ordinances, rule or regulation.

(j) Leaking or defective water pipes, sewer pipes, hydrants, cisterns, wells, gutters, drains, rain spouts or seepage in or about any structure used for human occupancy or the surrounding earth.

(k) Any abandoned or open wells, cisterns or cellars.

(l) The discharge of any filthy or offensive water, swill, liquid or waste from any commercial establishment into or on any street, alley, sidewalk, gutter, vacant lot, stream or river.

(m) The keeping or maintaining of any hives or boxes used or occupied or for the purpose of housing or occupation by bees within the city limits, except as hereinafter provided. The keeping of bees shall not be prohibited in agricultural zones, provided no box or hive containing bees permitted to fly at large shall be kept within one hundred (100) feet of any dwelling except the dwelling of the owner of such bees, or within fifty (50) feet of any exterior boundary within which the box or hive is kept.

(n) The parking or storage of any vehicle or machine or parts thereof in violation of any municipal code, state statute or federal law.

(o) Any building or structure including the ground on which it sits that is used for the unlawful manufacture, cultivation, growth, production, processing, sale, possession, or storage of any controlled substance as defined in R.R.S., chapter 28, article 4.

(p) Any excavation exposed so as to catch and hold water, filth or any refuse matter.

(q) Leaving any refrigerator, or any cabinet enclosing apparatus for the cooling or freezing of perishable articles or substances outside of a building unless the doors of every compartment of such refrigerator or cabinet are removed. Provided, however, that such doors need not be removed if each door is secured by a hasp and lock.

(r) Permitting, allowing, or maintaining any growth of twelve (12) inches or more in height of weeds or grasses on any lot or tract of land within the City, or permitting such lot or tract of land or the adjoining streets and alleys to become covered or overgrown with weeds, or littering or causing litter to be deposited or remain thereon except in proper receptacles.

(s) Placing or accumulating junk. It shall not be unlawful to:

(1) keep or store junk inside a building;

(2) keep or store junk in a junkyard as defined in section Chapter 25, Article 22, which junkyard is in a location permitted under Chapter 25;

- (3) accumulate or permit junk to remain on a lot or other tract of land owned or occupied by the person accumulating the junk or permitting it to remain, for a period not to exceed ten (10) days, for the sole purpose of preparation for removal from the premises;
- (4) hold not more than two (2) damaged or inoperable automobiles for purposes of restoration if such automobiles are concealed by an automobile cover and situated in a rear or side yard (except a side yard abutting a street) of a lot or tract on which is situated a residence.

(t) Every other act or thing done, made, permitted, allowed or continued on any property, whether public or private, detrimental to the health or likely to injure any of the inhabitants of the city. (Ord. 3884, 2005)

12-1-4 through 12-1-7. Repealed.

12-1-8. Right of entry.

For the purpose of administering and enforcing the provisions of this Chapter, any police officer, the Planning and Building Official and any other City employee designated by the City Manager shall have the right to enter any premises in the City at any reasonable time. (Ord. 3452, 1995)

(b) ABATEMENT PROCEDURES

12-1-9. Notice to remove.

If any nuisance as defined in this Municipal Code shall exist anywhere subject to this Chapter, the City Manager or his designee may give notice to abate and remove such notice to each owner or owner's duly authorized agent and to the occupant, if any, of the property where the nuisance is located. If notice by personal service or certified mail is unsuccessful, notice shall be given by publication in a newspaper of general circulation in the city or by posting the notice on the lot or ground upon which the nuisance is to be abated and removed. The notice shall contain:

- a. An order to abate the nuisance within a stated time.
- b. A statement that the party may request a hearing before the City Manager within five days after receiving the notice.
- c. The location of the nuisance, if the same is stationary.
- d. A description of what constitutes the nuisance.
- e. A statement of acts necessary to abate the nuisance.
- f. A statement that if the nuisance is not abated as directed and no request for hearing is made within the prescribed time, the city shall abate such nuisance and assess the cost thereof against such person.

Within five days after receipt of such notice, if the owner or occupant of the land does not request a hearing with the City Manager or fails to comply with the order to abate and remove the nuisance, the City Manager or his designee may cause the City to remove the nuisance. Within five days after receipt of such notice the owner or occupant may make a written request for a hearing before the City Manager. Such a request shall suspend the notice to abate and remove unless an emergency was declared as provided in this Chapter. At such hearing the City Manager may order the nuisance abated and removed within such time as the City Manager shall determine. If the nuisance is not

abated and removed within the time specified by the City Manager, the City Manager or his designee may cause the City to remove the nuisance. The costs and expenses of any such work shall be paid by the owner. If unpaid for two months after such work is done, the City may either (a) levy and assess the costs and expenses of the work upon the lot or piece of ground so benefitted in the same manner as other special taxes for improvements are levied and assessed or (b) recover in a civil action the costs and expenses of the work upon the lot or piece of ground and the adjoining streets and alleys. Any junk which is removed under the provisions of this section shall be impounded and shall be valued as provided elsewhere in this Chapter. The remedy provided in this section shall be cumulative with any other remedy provided in this Municipal Code, or otherwise available at law or in equity. (Ord. 3799, 2004)

12-1-10. Emergency.

If the City Manager or his designee shall determine that a particular nuisance as defined in this Municipal Code is so unsafe, or is unsafe in a respect such that a delay in removal thereof would result in undue danger or other hazard to persons or property, he or she may declare in writing that there exists an emergency requiring that this nuisance be removed immediately and order the appropriate city employees to remove the nuisance. The costs and expenses of such removal may be assessed as provided in this Chapter. Any junk which is removed under the provisions of this section shall be impounded and shall be valued as provided in this Chapter. The remedy provided in this section shall be cumulative with any other remedy provided in this Municipal Code, or otherwise available at law or in equity. (Ord. 3452, 1995)

(c) SPECIAL PROVISIONS RELATING TO JUNK

12-1-11. Value determination.

(a) The City Manager or his designee, after removing and impounding junk as provided elsewhere in this Chapter, shall determine whether the fair market value of the junk exceeds the sum of fifty dollars (\$50.00). For purposes of such valuation process, articles shall be valued in the following sequence:

- (1) each particular article which may have a value in excess of fifty dollars (\$50.00);
- (2) each set, partial or complete, of components of a particular type of machinery, appliance or equipment which may have a value in excess of fifty dollars (\$50.00); and
- (3) each aggregate of articles that are identical or substantially similar to each other in character, which may have a value in excess of fifty dollars (\$50.00).

(b) After such part of the valuation process has been completed:

- (1) those particular articles, sets or aggregates finally determined to have a fair market value in excess of fifty dollars (\$50.00) shall be deemed to constitute junk having a market value in excess of fifty dollars (\$50.00); and
- (2) those finally determined not to have such a fair market value, together with any other articles or materials not valued to that point, shall be again valued and, if all of these in the aggregate shall be determined to have a fair market value in excess of fifty dollars (\$50.00), then such articles and materials collectively shall be deemed to constitute junk having a fair market value in excess of fifty dollars (\$50.00); otherwise, such articles and materials shall be deemed collectively not to be junk

having such value. (Ord. 3452, 1995)

12-1-12. Value not exceeding \$50.00.

If the City Manager or his designee shall certify that the fair market value of certain junk valued in accordance with this Chapter does not exceed the sum of fifty dollars (\$50.00), title to such junk shall immediately vest in the City, and the City, in the discretion the City Manager, may retain and use, sell at private sale or public auction, or otherwise dispose of such junk. If such junk is sold, the proceeds of sale shall be retained by the City and deposited in the General Fund. (Ord. 3452, 1995)

12-1-13. Value exceeding \$50.00; scope of sections.

All the subsequent sections of this Chapter pertaining to junk apply to junk, and only to junk, which the City Manager or his designee shall have determined in accordance with this Chapter to have a fair market value in excess of fifty dollars (\$50.00). (Ord. 3452, 1995)

12-1-14. Inquiry; notice.

The City Manager or his or her designee shall make inquiry concerning ownership of, and possessory or any other legal interests in, the impounded junk, unless he already shall be duly informed in regard thereto. He then shall give notice by certified mail addressed to the person or persons who are or appear or claim to be the owner(s) of, or to have a possessory or other interest in the junk. The notice should state if junk is not claimed as provided this Chapter, by a date to be specified in the notice, which shall be not less than thirty (30) days after the notice was mailed, the junk may be sold by the City Manager or his designee at public auction after that date, and a part or the whole of the proceeds may be retained by the City. (Ord. 3452, 1995)

12-1-15. Claim; information.

Any person claiming the junk, or a part thereof, shall file with the City Manager or his designee, before the junk shall have been sold by the City Manager or his designee, a written claim, on a form to be supplied by the City Manager or his designee, wherein is stated the alleged ownership or possessory or other interest of the claimant in the junk, and a demand for its release to the claimant. The City Manager or his designee, whether or not such a claim is filed, shall inform whoever claims the junk, or makes inquiry, concerning the circumstances upon which were based the removal and impoundment of the junk, and the amount of expense of removal, impoundment and storage of the junk, the cost of postage on, and publication of, notices mailed as provided in this Chapter, and the expense of the advertising, if any, of a proposed sale of the junk. (Ord. 3452, 1995)

12-1-16. Determination; expenses; payment; release.

If the City Manager or his designee shall determine the claimant to be the owner of the junk, or to have an interest in the junk entitling him to the possession thereof upon compliance with the requirements of this section, the City Manager or his designee shall release the junk to the claimant upon payment by the claimant to the City Clerk of the expenses referred to in section 12-1-15, as determined by the City Manager or his designee; otherwise, the City Manager or his designee shall deny the claim. The City Manager or his designee shall enter in writing his determinations in this regard and, upon request of the claimant, shall supply to the claimant a copy thereof. (Ord. 3451, 1995)

12-1-17. Sale; notice.

If no claim to the junk shall have been filed with the City Manager or his designee as provided in this Chapter within thirty days after a notice was mailed in accordance with this Chapter or if such a claim was filed and by the City Manager or his or her designee denied as provided in this Chapter, the City Manager or his or her designee may cause a notice of a public auction of the junk to be published one time in a newspaper of general circulation within the City not less than ten (10) nor more than twenty (20) days prior to the auction. The notice shall state the time and place of the auction and list the junk to be sold. A copy of the published notice shall be mailed by the City Manager or his or her designee to each person who is or appears or claims to be the owner(s) of, or to have a possessory or other interest in the junk. (Ord. 3452, 1995)

12-1-18. Sale; proceeds.

If the junk has not been released to a claimant prior to the sale as provided in this Chapter, the City Manager or his or her designee shall sell the junk or cause it to be sold at public auction at the time and place and in the manner, if any, specified in the notice. The proceeds shall, by the City Manager or his or her designee, be delivered to the City Clerk, and shall be applied in reimbursement of the expense which was incurred by the City, as determined by the City Manager or his designee, in removing, impounding, storing and selling the junk (including all of the expenses referred to section 12-1-15, and the excess, if any, shall be held by the City Treasurer, without interest, for the benefit of the owner of the junk, or of anyone having a prior right thereto, for a period of two (2) years. If not claimed within such period, such excess shall be paid into the general fund of the City. (Ord. 3452, 1995)

12-1-19. Liability.

Neither the owner, lessee or occupant of the premises from which the junk was removed, or of premises which abutted a sidewalk, street or alley space, parking or other public place from which the junk was removed, nor the City, or any officer, employee or contractual agent thereof shall be liable to any person for loss or damage to any junk which occurs during its removal, impoundment, storage, or disposition by the City as provided in this Chapter. (Ord. 3452, 1995)

(d) VIOLATIONS

12-1-20. Violation; penalty.

It is a Class II violation to permit a nuisance to exist or continue in violation of this Chapter or of any notice served as provided in this Chapter. Each day on which a violation occurs shall constitute a separate and distinct offense. The provision defining each day as a separate offense shall not be applicable to nuisances described in Section 12-1-3(r). In addition, the sentencing court may order such person to reimburse the City for the fair and reasonable costs incurred by the City in removing the nuisance. (Ord. 3452, 1995)